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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/912,266	07/24/2001	James E. Fleming	390054.402	4134
500	7590	01/07/2005	EXAMINER	
SEED INTELLECTUAL PROPERTY LAW GROUP PLLC			GABEL, GAIENE	
701 FIFTH AVE			ART UNIT	
SUITE 6300			PAPER NUMBER	
SEATTLE, WA 98104-7092			1641	

DATE MAILED: 01/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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010505

DATE MAILED:

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Commissioner for Patents

Non-Responsive Amendment

1. The reply filed on 10/27/04 is not fully responsive to the prior Office Action because claims have been amended to encompass originally non-elected claims. Specifically, elected claims are drawn to method of detecting viable cells, while non-elected claims are drawn to device and method of quantitating viable cells and total populations of cells and correlating values therebetween. Accordingly, it has been determined that claims 34-40, as amended, are directed to a new invention that is independent or distinct from the invention originally claimed.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 34-40, as amended, should be withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03. Applicant is advised to bring back the claims that were previously under prosecution.

2. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

Art Unit: 1641

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gailene R. Gabel whose telephone number is (571) 272-0820. The examiner can normally be reached on Monday, Tuesday, and Thursday, 7:30 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long V. Le can be reached on (571) 272-0823. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gailene R. Gabel
Patent Examiner
Art Unit 1641
January 5, 2005

g

Christopher L. Chin

CHRISTOPHER L. CHIN
PRIMARY EXAMINER
GROUP 1800/1641

1/5/05